

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Before the court is defendant Metropolitan Life Insurance Company’s (“MetLife”) motion for summary judgment. Doc. #109.¹ Plaintiff Jamie Clark (“Clark”) filed an opposition to which Metlife replied.

Also before the court is Clark's motion for leave to file supplemental briefing on MetLife's motion for summary judgment. Doc. #175.

I. Facts and Background

Non-party Bruce Clark had a \$250,000 insurance policy with defendant MetLife. Plaintiff Clark was one of the beneficiaries under the policy.

On August 1, 2006, Bruce Clark died. Clark received a claims package from MetLife. The claims package stated that if the amount of any policy disbursement exceeded \$5,000, MetLife will

¹ Refers to the court's docket number.

1 generally establish a Total Control Account Money Market Option² (“Total Control Account” or
 2 “TCA”) unless the beneficiary chooses another method of payment. Clark’s step-mother filled out
 3 the claim form and Clark signed and returned it without choosing a disbursement option.

4 On August 24, 2006, MetLife established a TCA account for Clark in the amount of
 5 \$50,000. At that time, Clark was provided a package including the completed claims forms and a
 6 TCA booklet. The TCA booklet contained the Customer Agreement; a checkbook; a Change of
 7 Accountholder Information Form; a Beneficiary Designation Form; and a privacy notice.
 8 Doc. #111, Exhibit 9. On September 21, 2007, Clark’s TCA account was administratively closed
 9 due to exhaustion of funds.

10 Subsequently, Clark filed a class action complaint against MetLife alleging three causes of
 11 action: (1) breach of contract; (2) breach of fiduciary duty; and (3) unjust enrichment. Doc. #14.
 12 MetLife filed a motion to dismiss (Doc. #26) which the court granted in-part and denied in-part
 13 (Doc. #50). The court granted the motion to dismiss as to the unjust enrichment claim and the
 14 breach of fiduciary claim. *Id.* However, the court held that Clark had sufficiently pled a claim for
 15 breach of a special/confidential relationship and that Clark may pursue such a claim into discovery.

16 *Id*

17 Thereafter, MetLife filed the present motion for summary judgment on the two remaining
 18 claims: (1) breach of contract; and (2) breach of a special/confidential relationship. Doc. #109.

19 **II. LEGAL STANDARD**

20 Summary judgment is appropriate only when “the pleadings, depositions, answers to
 21 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
 22 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
 23 of law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together

25 ² The TCA is MetLife’s version of a retained asset account. The TCA is an interest-bearing account on
 26 which the accountholder may write checks at any time. A TCA represents a MetLife liability which it pays
 from its general corporate assets as checks are written on the account.

1 with all inferences that can reasonably be drawn therefrom, must be read in the light most
 2 favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
 3 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cnty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir.
 4 2001).

5 The moving party bears the burden of informing the court of the basis for its motion, along
 6 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
 7 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
 8 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could
 9 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
 10 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

11 To successfully rebut a motion for summary judgment, the non-moving party must point to
 12 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*
 13 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might
 14 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
 15 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary
 16 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute
 17 regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could
 18 return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of
 19 a scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a
 20 genuine dispute; there must be evidence on which the jury could reasonably find for the plaintiff.
 21 *See id.* at 252.

22 **III. Discussion**

23 **A. BREACH OF CONTRACT**

24 To prevail on a breach of contract claim, a plaintiff must demonstrate: (1) the existence of a
 25 valid contract; (2) a breach by the defendant; and (3) damages resulting from defendant’s breach.
 26

1 *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006); *Brown v. Kinross Gold*
2 *U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1240 (D. Nev. 2008).

3 Here, there are two contracts governing MetLife's relationship with Clark: (1) Bruce
4 Clark's insurance policy; and (2) the TCA Customer Agreement. *See* Doc. #111, Exhibit 1;
5 Doc. #111, Exhibit 9(a). The insurance policy provides in relevant part:

6 Unless otherwise requested, we may pay the insurance proceeds when the
7 insured dies, or the cash value on surrender of the policy in one sum, or by
8 placing the amount in an account that earns interest. The payee will have
immediate access to all or any part of the account.

9 Doc. #111, Exhibit 1. Additionally, the Customer Agreement provides in relevant part:

10 **What is the Total Control Account Money Market Option?**

11 It is a settlement option at MetLife . . . which credits money market interest
12 rates on life insurance, annuity, and matured endowment proceeds, and other
13 amounts payable to the Account holder . . . You have total control of the money
14 in your Account in that you can make withdrawals of \$250 or more anytime,
15 without penalty or loss of interest. MetLife fully guarantees the principal and all
16 the interest you have earned.

17 . . .

18 **What Rate of Interest Will I Earn?**

19 MetLife will set the interest rate weekly. If your account balance is \$2,500
20 or more, the rate we set will be equal to or higher than at least one of the
21 following indexes: the prior week's Money Fund Report Averages, Government
22 7-day Simple Yield (a leading index of government money market mutual fund
rates), or the Bank Rate Monitor National Money Market Rate Index (a leading
index of rates paid by 100 large banks and thrifts on money market accounts).

23 Subject to the terms of this Agreement, we guarantee that the effective annual
24 yield on your Account will not be less than 3%, even if money market yields fall
25 below that level. Of course, you always have the right to withdraw your entire
26 Account balance.

27 . . .
28 **How Much Does the Account Cost Me?**

29 There is no monthly service or maintenance fee for your Account, and there
30 is no charge for withdrawals or for checks. Special services such as stop payment
31 orders, photocopies of checks or statements, wire transfers, and dishonored
32 checks are subject to the current applicable fees of the bank.

33 Doc. #111, Exhibit 9(a).

34 Under these contracts, Clark alleges that MetLife breached its contractual obligations when
35 it: (1) did not place her funds in an interest bearing account; (2) did not handle her funds at no cost

1 without any service or maintenance fees; and (3) did not place her funds in a money market
2 account. The court shall address each alleged breach in turn.

3 **1. INTEREST BEARING ACCOUNT**

4 Pursuant to Bruce Clark's insurance policy, MetLife was required to place Clark's death
5 benefits "in an account that earns interest." Doc. #109, Exhibit 1. In her complaint, Clark alleges
6 that rather than place her benefits in an account that earns interest, MetLife credited her a \$50,000
7 TCA draw against MetLife's general corporate assets which is a breach of the governing contracts.
8 The court disagrees.

9 Although MetLife concedes that it satisfied all of its TCA liabilities, including Clark's,
10 from its general corporate assets account, it is undisputed that the general corporate asset account
11 is an account that earns interest, and that Clark's \$50,000 was placed into that account and earned
12 interest during the time it was active. The fact that assets used to pay Clark's TCA liability were
13 retained in MetLife's general asset account does not make that account any less of an account that
14 earns interest. Moreover, Clark conceded in her deposition that she earned interest on the monies
15 in her TCA account. Doc. #111, Exhibit 18, Clark Depo. p.242 l.23-4 ("Q. Did MetLife set up an
16 account for you? A: Yes . . . Q: Did that account earn interest? A: Yes."). Therefore, the court
17 finds that MetLife met its contractual obligations to place Clark's benefits in an account that
18 earned interest. Accordingly, MetLife is entitled to summary judgment on this breach of contract
19 allegation.

20 **2. MAINTENANCE FEES**

21 In her complaint, Clark alleges that MetLife contracted to provide her TCA at no cost to
22 her. The initial claims package stated in pertinent part:

23 *FREE - You pay nothing for this Account.* There are no transaction or monthly
24 service charges, and there is no charge for reordering checks. There are no limits
on the number of checks you may write.

25 Doc. #14, Exhibit 2 (emphasis in original). Additionally, the Customer Agreement provided that

1 there would be no maintenance fee or cost for the TCA:

2 **How Much Does the Account Cost Me?**

3 There is no monthly service or maintenance fee for your Account, and there
4 is no charge for withdrawals or for checks. Special services such as stop payment
orders, photocopies of checks or statements, wire transfers, and dishonored
checks are subject to the current applicable fees of the bank.

5 Doc. #109, Exhibit 9(a). Clark argues that based on these statements, MetLife was not authorized
6 to take any fee related to managing the TCA and breached that obligation by charging substantial
7 fees for managing the TCA.

8 MetLife concedes that it earned over \$10 million last year in investment earnings on its
9 general account after paying TCA holders the contractually set interest rate. However, the court
10 finds that the money that was earned was not a management fee but was MetLife's portion of
11 earnings. John D'Onofrio ("D'Onofrio"), a Director in the Life Products Management Department
12 of MetLife, testified in his deposition that MetLife did not take any management fees for managing
13 the TCA, but only retained earnings on the difference between interest earned on the investment of
14 general corporate assets and the paid rate of interest linked to money market rates.³ Doc. #109,
15 Exhibit 16, D'Onofrio Depo. p.160 l.3-17. The court finds that any profit from investment earnings
16 in excess of its contractual liabilities to TCA account holders is no more a fee or charge than is the
17 profit earned by a bank from investing deposits in a checking account a fee or charge to the
18 depositor. Such margins are critically important to cover operational expenses and provide profits
19 which allow them to stay in business and is not a breach of the governing contracts.

20 Additionally, the court finds that Clark misconstrues the customer agreement in relation to
21 the "fees" charged by MetLife. The customer agreement, in contrast to Clark's position, does not
22 broadly state that the TCA is being provided at absolutely no cost, but that there is no monthly
23 maintenance or service fee for the account. *See* Doc. #109, Exhibit 9(a) ("There is no monthly
24

25 ³ For example, if the credited money market rate was 4.2% and MetLife earned 5% on its general
26 account investments, MetLife would keep the .8% difference as investment earnings.

1 service or maintenance fee for your account.”). The evidence is undisputed that MetLife never
 2 charged Clark a monthly fee for managing her TCA account. Accordingly, MetLife is entitled to
 3 summary judgment as to this breach of contract allegation.

4 **3. MONEY MARKET ACCOUNT**

5 Pursuant to the insurance policy, MetLife was required to place Clark’s benefits in an
 6 account that earned interest. Doc. #109, Exhibit 1. The account set up by MetLife, entitled the
 7 Total Control Account Money Market Option, “credits money market interest rates on life
 8 insurance.” Doc. #109, Exhibit 9(a). Clark argues that based on this provision and the insurance
 9 policy, MetLife was required to provide her with a money market account⁴ and breached its
 10 contractual obligations when it failed to do so.

11 In its motion for summary judgment, MetLife concedes that it did not place Clark’s
 12 benefits into a money market account. However, MetLife argues that there is no policy language
 13 that required MetLife to provide Clark with a money market account because the TCA is “a
 14 settlement option . . . which *credits* money market interest rates.” Doc. #111, Exhibit 9(a)
 15 (emphasis added). Further, according to John D’Onofrio (“D’Onofrio”), a Director in the Life
 16 Products Management Department of MetLife, the TCA is “[a] money market settlement option
 17 [which] is an insurance product,” rather than a separate money market account. Doc. #111,
 18 Exhibit 16, p.73 l.13-14.

19 Initially, the court finds that the name of the account, the Total Control Account Money
 20 Market Option, is inherently deceptive because it gives the beneficiary the impression that the
 21 account is either a money market account, or is associated with a money market account, and
 22 contains the same benefits and protections that a money market account offers, namely that the
 23

24 ⁴ A money market accounts is a type of deposit account, offered by banks, that accrues interest. The
 25 money a person keeps in that account is invested, but the institution offering the account does the investing and
 26 collects the return offering a lower rate of interest than the actual investment return earned on the funds. *See Goldblatt v. FDIC*, 105 F.3d 1325, 1329 n.3 (9th Cir. 1997).

1 account is insured by the Federal Deposit Insurance Corporation (“FDIC”) if MetLife was to
2 become insolvent and file for bankruptcy. Further, MetLife continually makes reference to money
3 market account rates throughout the TCA Customer Agreement. *See e.g.*, Doc. #111, Exhibit 9(a).
4 Therefore, the court finds that an ordinary reasonable person, provided with the contracts at issue,
5 would be under the impression that they were receiving either a money market account or an
6 account associated with money market protections. Because MetLife concedes that it did not
7 provide Clark a money market account, the court finds that MetLife breached its obligations under
8 the contracts.

9 However, the court finds that MetLife is entitled to summary judgment on Clark’s breach
10 of contract claim because Clark did not suffer any damages as a result of MetLife’s breach. The
11 evidence is undisputed that Clark did not actually read or rely on the statements or contracts
12 provided by MetLife. Doc. #109, Exhibit 18, Jamie Clark Depo., p.28-29 l.24-2 (“Q: At - before
13 you signed the claim form did you read any other documents from [MetLife]? A: I don’t believe
14 so. I don’t remember reading anything.”); Clark Depo., p.29 l.7-13 (“Q: At any time before you
15 signed the claim form did you read any documents from [MetLife]? . . . A: I honestly don’t
16 remember going over it.”); Clark Depo., p.36 l.1-10 (“Q: Do you recall receiving this TCA kit with
17 your checkbook? A: I do. Q: Did you look it over when you received it? A: . . . I didn’t read in
18 detail everything. Q: Understood. Do you recall if you read this document in detail? A: I do not
19 recall reading this in detail.”).

20 Further, Clark testified that she did not understand MetLife’s contracts to require a money
21 market account. Doc. #109, Exhibit 18, Clark Depo., p.44 l.8-17 (“Q: Did you understand the
22 paperwork to say that a money market account would be opened in your name? A: I don’t really
23 know what a money market account is. I know it’s something. It’s a thing. I don’t exactly know
24 what it is but I know it was - it was an account in my name. It was my money, and that the account
25 was free and there was no charge and that was - those were the things that stuck out to me time and

1 time again throughout the - just those are things that people like me understand, no charge, free, no
 2 fees, all of the interest, your money, your account.”). Therefore, the evidence establishes that Clark
 3 was not expecting a money market account and the protections that it entails when she submitted
 4 her claims forms.

5 Additionally, it is undisputed that the interest credited to Clark’s TCA account, between its
 6 establishment in August 2006 and its exhaustion in September 2007, exceeded the National Money
 7 Market Rate Index during that time period. Specifically, Clark was credited with interest on her
 8 account ranging from 4.2% to 3.8% throughout the account’s life⁵ while the relevant money
 9 market rate index ranged from .78% to .94% during the relevant time period.⁶ Thus, Clark earned
 10 more interest through MetLife’s TCA than she would have earned if the money had been placed in
 11 a money market account. Therefore, the court finds that Clark did not suffer any damages as a
 12 result of MetLife’s breach. Accordingly, MetLife’s motion for summary judgment shall be granted
 13 as to the breach of contract claim.

14 **B. BREACH OF SPECIAL/CONFIDENTIAL RELATIONSHIP**

15 A confidential or special relationship arises from the specific actions and particular
 16 situations of the parties. *Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 882 (9th Cir.
 17 2007). A confidential relationship exists “where one party gains the confidence of the other and
 18 purports to act or advise with the other’s interests in mind” and is in such a superior position as to
 19 exert influence over the other party, while a special relationship requires a showing that (1) the
 20 situation would cause a reasonable person to impart special confidence in another, and (2) the
 21 trusted party reasonably should have known of that confidence. *Id.* at 881-882. Further, the special
 22 confidence that is placed in another must be more confidence and reliance than would be placed in
 23

24 ⁵ Doc. #109, Exhibit 10; Exhibit 7 (identifying interest rates paid to Clark on a monthly basis).

25 ⁶ Doc. #109, Exhibit 11; Exhibit 11b (identifying the relevant money market index rates during the
 26 relevant time period).

1 an ordinary person or business carrying out the same activities. *Mackintosh v. Jack Mathews &*
 2 *Co.*, 855 P.2d 549, 550 (Nev. 1993).

3 Clark argues that a confidential and/or special relationship arose between her and MetLife
 4 when MetLife undertook to invest her insurance proceeds and pay her all earnings and gains on
 5 such investments. Clark bases the genesis of this relationship on statements in MetLife's claim
 6 documentation including:

7 Metropolitan Life Insurance Company . . . [has] gained valuable experience
 8 in assisting people like you through this difficult period. We want to make sure
 9 that you have the opportunity to benefit from our experience.

10 . . .
 11 We help millions of Americans protect their financial security. Please be
 12 assured that we are here to help you in any way we can.

13 Doc. #14, Exhibit 2. Clark also references statements made in the Customer Agreement:

14 . . .
 15 MetLife promises to try to help you deal with some of the difficulties faced
 16 during this time.

17 . . .
 18 Please be assured, MetLife is here to help you through this difficult period
 19 . . . and beyond.

20 . . .
 21 Over the years beneficiaries have told us that the period following death of
 22 a loved one is the worst time to make long-term financial decisions. So, instead
 23 of delivering your proceeds in a lump-sum check, which would require you to
 24 decided what to do with it, we have provided the Total Control Account Money
 25 Market Option (TCA Account).

26 Doc. #109, Exhibit 9.

27 Initially, the court finds that Clark did not place any special confidence in MetLife. Clark
 28 bases her purported special confidence entirely upon statements in the documents she received
 29 which she concedes she did not read at the time she filled out the claims form or during the time
 30 her TCA account was active. Doc. #109, Exhibit 18, Clark Depo., p.28-29 1.24-2. Further, Clark
 31 did not rely on anyone at MetLife for advice on financial matters or how her money should be
 32 handled. Rather, she relied solely on her step-mother who filled out the claims forms for her.
 33 Clark Depo., p.15 1.4-13.

34 Additionally, the relationship between MetLife and Clark was one of debtor-creditor and
 35

1 under Nevada law Clark must provide evidence of significant “additional ties” beyond a normal
2 business or customer relationship to establish a special or confidential relationship. *See*
3 *Mackintosh*, 855 P.2d at 550. The court finds that there is no evidence that Clark had any ties with
4 MetLife that could rise to such a special relationship. There was never any direct contact between
5 Clark and MetLife outside of the initial claims forms and monthly accountings.

6 Finally, there is no evidence that MetLife knew about any special confidence Clark
7 allegedly placed in it. Clark took no action to provide notice to MetLife that she was placing
8 special confidence in their actions. Absent notice by the other party, there can be no
9 special/confidential relationship. *Giles*, 494 F.3d at 882. Therefore, the court finds that there is no
10 disputed issue of material fact that MetLife did not have a special or confidential relationship with
11 Clark. Accordingly, MetLife’s motion for summary judgment shall be granted as to this claim.

12

13 IT IS THEREFORE ORDERED that defendant’s motion for summary judgment
14 (Doc. #109) is GRANTED.

15 IT IS FURTHER ORDERED that the clerk of court shall enter judgment accordingly.

16 IT IS FURTHER ORDERED that plaintiff’s motion for leave to file supplemental briefing
17 (Doc. #175) is DENIED.

18

IT IS SO ORDERED.

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DATED this 9th day of September, 2010.



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21
22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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